

FRONT LINE

June 2002

OFFICE OF MISSOURI ATTORNEY GENERAL

Vol. 9, No. 2

Several bills on criminal issues await signing

THE MISSOURI Legislature passed several crime-related bills. If signed by the governor, most would become law Aug. 28.

● **SB 758** and **SB 1070** close a significant loophole in Missouri's sex offender registration law. The bills would require offenders to register within 10 days of:

- Conviction;
 - Release from incarceration; or
 - Placement upon probation.
- Any offender not registered would



LEGISLATIVE UPDATE

View the full text of legislation:

www.house.state.mo.us/bills02/rpt02/truagree.htm

have to do so by Sept. 7, 2002. **SB 969** also closes the loophole and would create several new crimes.

● **SB 712** incorporates several

recommendations made by the governor's task force in the wake of the Sept. 11 attacks.

The bill would create a Joint Committee on Terrorism, Bioterrorism, and Homeland Security to be composed of seven representatives and seven senators, would grant the State Water Patrol and Attorney General additional authority in fighting terrorism, and would create or amend

SEE LEGISLATION, Page 2

Federal court allows questions unrelated to stop

THE SCOPE of questioning allowed by an officer during a routine traffic stop is an ongoing legal debate affecting law enforcement.

Any questioning that extends the stop longer than legal or necessary is, of course, improper. But what about questions unrelated to a routine traffic stop such as: "Are you armed?" "Do you have drugs?" or "Where are you headed?"

Some courts and defense attorneys argue that an officer should not ask any question unrelated to a stop's purpose. Other

courts have indicated that part of the duty an officer undertakes to protect the public requires inquisitiveness and curiosity and, if the officer does not unnecessarily extend the detention, any questions are permissible.

In a 7th Circuit case decided in January (*United States v. Childs*, 277 F.3d 947, 954), an officer stopped Tommie Childs' vehicle a second time for having a cracked windshield.

The officer asked him if

SEE QUESTIONS, Page 2

Death rate for Missouri police officers high

THE NATIONAL LAW Enforcement Officers Memorial Fund, which recognizes officers killed on the job, released 2001 statistics showing Missouri ranked eighth as the most dangerous state for peace officers. Missouri's ranking is consistent over the past century.

Last year, six peace officers were killed in the line of duty in Missouri. Four involved traffic accidents and two involved shootings. Four of them, including the shooting victims, were not wearing protective body armor.

Other factors that contributed to the state's high death rate include the quality of roads and historically low training requirements in Missouri.

Since the first recorded death of an officer in America in 1792, 562 peace officers have been killed in Missouri.

States with highest death rates

(The top seven states have much larger populations than Missouri.)

1. California
2. New York
3. Texas
4. Illinois
5. Ohio
6. Pennsylvania
7. Florida
8. Missouri

LEGISLATION: CONTINUED FROM PAGE 1

several crimes to combat terrorism, including bioterrorism.

● **HB 1037** and **SB 650** allow a prosecution for forcible rape, forcible sodomy, attempted forcible rape or attempted forcible sodomy to be brought at any time.

Interpretation of previous law set the statute of limitations at three years because they are classified felonies. Both bills have been signed into law.

● **HB 1888** makes several changes to the pawnbroker law, including authorizing creation of an electronic database to compile pawnbroker transactions.

HB 1888 also changes the felony stealing threshold in a number of stealing-related statutes from \$150 to \$500. For the crime of stealing, the felony threshold is reduced from \$750 to \$500. If a person



LEGISLATIVE UPDATE

steals property or services valued at \$25,000 or greater, that person commits a Class B felony.

Please consult with your local prosecuting attorney about how HB 1888 may impact your agency.

● **HB 2120** addresses how to determine the value of property stolen by a shoplifter. The value of the property stolen is the price at which the merchant would normally sell that property.

● **SB 795** allows the governing body of St. Louis County to establish an Emergency Communications System Commission and to submit to the voters whether to fund that system.

OTHER BILLS

● **SB 923** requires ministers to report suspected child abuse or neglect.

● **HB 1443** allows a person to bring a newborn to certain "safe places" after birth without fear of prosecution.

● **HB 2002** and **SB 1113** allow coroners discretion as to when to seek an inquest when a suspicious death has occurred and requires jurors reviewing the death to determine whether the act causing death, if a felony, was justified.

● **SB 1102** allows a local prosecutor to bring a nuisance action in cases where a building is being used for lewd activity involving sexual contact or other activity that may result in transmission of HIV.

● **HB 1270** and **HB 2032** revise various traffic regulations.

● **HB 1814** improves protections for individuals petitioning for orders of protection.

QUESTIONS: CONTINUED FROM PAGE 1

he was carrying marijuana and whether Childs would consent to a search. After he agreed, cocaine was found.

The court said the "Supreme Court has held repeatedly that officers may approach persons and ask questions or seek permission to search, provided that the officers do not imply that answers or consent are obligatory." After all, citizens are never required to answer questions by police, whether

under arrest or not.

The court noted Childs was already seized pursuant to a lawful *Terry* stop, and the questioning did not change the nature of the seizure nor make it unreasonable: "Questions that hold potential for detecting crime, yet create little or no inconvenience, do not turn reasonable detention into unreasonable detention."

The court did re-emphasize that

police officers cannot lengthen the detention by asking questions unrelated to the stop's purpose. **That** would be an illegal seizure.

The court's decision is important because it validates a common — and expected — practice among good, conscientious officers fighting crime.

This is not an unreasonable law enforcement strategy; those who do not like the question can decline to answer.



Front Line Report is published periodically by the Missouri Attorney General's Office. It is distributed to law enforcement officials throughout the state. Find issues at moago.org/law.htm
 ■ **Attorney General:** Jeremiah W. (Jay) Nixon

■ **Editor:** Ted Bruce, Deputy Chief Counsel for the Public Safety Division

■ **Production:** Peggy Davis, publications & Web editor, Attorney General's Office
 P.O. Box 899, Jefferson City, MO 65102

UPDATE: CASE LAW

MISSOURI SUPREME COURT

DEVIATE SEXUAL INTERCOURSE

State v. James R. Niederstadt

No. 83914

Mo.banc, Jan. 22, 2002

There was sufficient evidence of deviate sexual intercourse to support the conviction of forcible sodomy.

The defendant subjected the victim to force sufficient to overcome reasonable resistance as required for forcible compulsion. The victim was repeatedly beaten and threatened prior to the sexual incidents in question and at 16 was much younger than the 40-year-old defendant and was naive in sexual matters.

The victim was wholly dependant on the defendant for subsistence, and due to the beatings and fear of future violence, she was afraid to report the incidents.

It could be fairly inferred that the same fear that kept her from reporting the sexual assaults also was likely to overcome her ability to resist them.

GUILTY PLEAS

George Brown Jr. v. State

No. 83406

Mo.banc, Feb. 13, 2002

The movant filed a motion to withdraw his guilty plea under Rule 29.07(d), alleging his plea was involuntary because it was induced by promises that he would be referred to an institutional treatment program and that the court would retain authority for 120 days to sentence him to probation under Section 559.115.2 if he successfully completed the program.

The court held that his claim should have been raised under Rule 24.035 and was time barred by the 90-day time limit. The court reaffirmed that Rule 29.07(d) cannot be used to circumvent the time limitations set out in Rule 24.035 and that state habeas corpus provides the proper avenue for relief in those limited circumstances in which the petitioner asserts a claim that is of the type enumerated in Rule 24.035, but that is time barred under that rule, if the petitioner can meet the "cause and prejudice" standard set out in *State ex rel. Nixon v. Jaynes*, (Mo.banc, Dec. 4, 2001.)

The movant's allegations were not sufficient to meet the above standard.

EASTERN DISTRICT

CERTIFICATION OF JUVENILES

State v. Johnnie L. Thomas

No. 78744

Mo.App., E.D., Jan. 22, 2002

The trial court did not err in refusing to dismiss the indictment or remand the first-degree murder case to juvenile court.

The juvenile court based its decision on nine of the 10 criteria listed in Section 211.071.6. The juvenile officer's statement that it is uncommon for the Division of Youth Services to retain jurisdiction after the 18th birthday was a correct statement of policy, and it was reasonable to conclude that rehabilitation within the juvenile system was only available to the defendant until he turned 18 despite the fact that the court could technically retain jurisdiction until the defendant turned 21.

Based on the crime committed, the period was not adequate to rehabilitate the defendant and to protect society.

State traffic stop report most comprehensive in U.S.

Missouri's 2001 traffic data report, which breaks down 1.4 million traffic stops by race, is the most comprehensive report ever produced in the country, Attorney General Jay Nixon said.

Nixon released the eight-volume, 1,334-page report. The report is required by Section 590.650, RSMo, which requires all law enforcement agencies to report data to the attorney general by March 1 each year.

The law also requires the attorney general to compile the data and report it to the governor and Missouri legislature no later than June 1 each year.

Nixon praised law enforcement for



working diligently to meet the law requirements without extra funding or support from the legislature. A total of 609 agencies reported information on 1,389,947 traffic stops, resulting in 99,860 searches and 76,567 arrests. Nixon said 58 agencies did not report or did not meet requirements of the law.

Statewide data shows that African Americans were stopped at a rate 33 percent higher than expected based

solely on their proportion of the population. When compared with whites, African American drivers were 35 percent more likely to be stopped than white drivers. The reported data show that African American drivers are 80 percent more likely to be searched than white drivers. Statewide, Hispanic drivers were no more likely to be stopped than white drivers but were twice as likely to be searched.

Nixon emphasized that his analysis is based on statewide figures and is not specific to any one city, where extenuating circumstances may affect the data.

June 2002

FRONT LINE REPORT

UPDATE: CASE LAW

EASTERN DISTRICT

DOUBLE JEOPARDY

Thomas Pfeiffer v. State

No. 79192

Mo.App., E.D., Jan. 22, 2002

The defendant's stealing conviction in St. Louis County violated the double jeopardy clause when the city of St. Louis unconditionally accepted the defendant's guilty plea for first-degree tampering of the same car. The first-degree tampering offense is a lesser-included offense of stealing. The court overruled its earlier opinion of *State v. McIntyre*, 749 S.W. 2d 420 (Mo. App. 1988) and concurred with federal court opinions. Jeopardy attaches upon the acceptance of a guilty plea that is unconditionally accepted.

SOUTHERN DISTRICT

EVIDENCE OF IMPAIRMENT

State v. Hauserman

No. 24054

Mo.App., S.D., Jan. 24, 2002

In a prosecution for involuntary manslaughter, the trial court did not err in denying a motion to strike the reference to the defendant's "having ingested methamphetamine" from the information or admitting evidence from a crime lab tech and a toxicologist that the amount of meth found in the defendant's system would impair him. The evidence was admissible on the impairment issue.

WESTERN DISTRICT

LESSER-INCLUDED OFFENSES

State v. Michael Dixon

No. 58749

Mo.App., W.D., Jan. 22, 2002

The court reversed the defendant's conviction of first-degree statutory rape and sodomy and remanded for new trial where there was insufficient evidence that the victim was younger than 14.

The court would not enter a conviction for second-degree statutory rape and sodomy since the jury was not instructed on the additional and distinct age elements for those offenses.

The defendant was not discharged since there was sufficient evidence to support convictions on the lesser-included offenses.

SEARCHES

State v. Thomas E. Rowe Jr.

No. 58691

Mo.App., W.D., Jan. 29, 2002

The court did not err in denying the defendant's motion to suppress a knife seized following a consensual search of his car.

The trooper did not force the defendant to stop the car such as in a traffic stop, but was already on the scene for unrelated purposes.

It could not be said that a reasonable person in the defendant's position would have felt free to leave without answering

the trooper's questions or to comply with a request to search the car.

There was sufficient evidence of the defendant's conviction of unlawful use of a weapon when the trooper testified that a knife was concealed in the pocket of the driver's side door. Although the knife handle was sticking up, the trooper could not tell it was a knife.

State v. Melinda Lorene Taber

No. 59304

Mo.App., W.D., Feb. 13, 2002

Finding that the trial court erred in admitting contraband and statements into evidence following a nonconsensual search of the defendant's purse, the court remanded the case for new trial.

After stopping the defendant for a perceived traffic offense that was unfounded, the trooper failed to inform the defendant she was free to leave. The trooper also proceeded to request that the defendant show her license and vehicle registration.

The defendant was arrested after a record check indicated she was wanted on a misdemeanor warrant. The trooper asked the defendant if she wanted him to retrieve her purse, and a search of the purse revealed marijuana.

Since a reasonable person would not understand she was free to leave when the trooper said the initial basis for the stop was unfounded, the search was not conducted under valid consent.